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CLIFFORD CHANCE US LLP

2001 K STREET NW
WASHINGTON, DC 20006 - 1001
TEL +1 202 912 5000
FAX +1 202 912 6000
www.cliffordchance.com

By E-mail

Direct Dial: +1 202 912 5109

E-mail: steve.cottreau@cliffordchance.com

The Honorable Frank Maas
Judge, United States District Court
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

December 18, 2015

In re Terrorist Attacks of September 11, 2001, 03 MDL 1570 (GBD) (FM)

Dear Judge Maas:

I am writing on behalf of Defendant Dubai Islamic Bank (“DIB”) in the spirit of openness and complete candor to provide the Court with an update concerning certain records at issue in Plaintiffs’ Motions to Compel DIB (Dkt. 2973 and Dkt. 2974).

Plaintiffs have moved to compel paper bank transaction records (such as deposit slips, withdrawal slips, etc.) (hereinafter “paper transaction records”) underlying banking transactions that are listed on bank account statements produced by DIB. DIB previously produced bank account statements for all accounts identified using a search term protocol agreed upon with Plaintiffs and individuals identified in certain government correspondence. See Opp’n to Pls.’ Mot. to Compel at 5–6 (Dkt. 3057). However, “the parties agreed to address on a case-by-case basis at a later stage” the issue of whether DIB would produce paper transactional records. See Letter from S. Cottreau to S. Carter (July 7, 2011) (Dkt. 2973 at Ex. O). Plaintiffs never requested that DIB pull any transaction records on a case-by-case basis as the parties agreed. Instead, Plaintiffs moved to compel the production of all paper transaction records for every transaction listed on the account statements that DIB produced.

In response to Plaintiffs’ motions to compel, Counsel for DIB recently engaged in the process of further assessing the burdensomeness of producing paper transaction records. During this process, counsel for DIB learned that InfoFort—DIB’s offsite records storage provider—had a fire in August 2014 at one of its warehouses. According to InfoFort’s incident report, which notes that it relies on the official Dubai police report, “the most likely cause of the fire may have

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been an electrical fault in a tube light. There is no finding in the [Dubai Police] report that human fault or negligence contributed to the incident.” App. A. We understand that this warehouse stored tens of thousands of boxes of DIB records as well as the records of many other InfoFort customers. We understand that all records in that warehouse were destroyed.

The fire occurred at an InfoFort facility in Jebel Ali, Dubai, United Arab Emirates. App. A at 1. InfoFort is a leading offsite records storage facility for numerous companies in Dubai. According to InfoFort, it “offers document storage and management services for its customers in Middle East and Africa. The clientele includes global and local companies, ranging from small and medium sized organizations to multinationals and Fortune 500 enterprises that span a broad range of industries that include Financial Services, Legal, Healthcare, Engineering, Government, Public Services, Energy, Oil and Gas, Information Technology and Media.” InfoFort, Secure Information Management Solutions.¹ Like many leading companies in the region, DIB has long relied upon InfoFort for the secure, offsite storage of banking records.

While we are still assessing the impact of the InfoFort fire, we believe that many (but not likely a majority) of paper transaction records at issue in the motions to compel were destroyed in the fire. Many of DIB’s records in offsite storage survived because they were stored at another InfoFort warehouse that was not affected by the fire.

DIB played no role in causing the fire. Nonetheless, we wanted to quickly bring these facts to the Court’s attention because they are related to the Plaintiffs’ pending motions to compel against DIB.

Sincerely,



Steven T. Cottreau

Attachment

¹ <https://www.infofort.com/about-infofort/infofort-secure-information-management-solutions.aspx> (last visited Dec. 17, 2015).